

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Plaintiff BNBuilders, Inc. (“BNB”) alleges as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. BNB is a Washington corporation with its principal place of business in King County, Washington. BNB is duly qualified to bring this action, having met all legal prerequisites.

2. BNBT Builders, Inc. ("BNBT") is a California corporation with its principal place of business in San Mateo County, California.

3. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1332 and 1441. BNB is a citizen of Washington for diversity purposes, and BNBT is a citizen of California. The amount in controversy exceeds \$75,000.

4. Venue is proper in the U.S. District Court for the Western District of Washington pursuant to 28 U.S.C. § 1391. BNB's claims in this litigation arise out of BNB's partnership with BNBT (the partnership is referred to as "BNBuilders"). BNBuilders has its

1 chief executive office in Seattle, Washington, which is within the area encompassed by the U.S.
 2 District Court for the Western District of Washington.

3 **II. BNBuilders PARTNERSHIP**

4 5. Since BNBT's formation in 2007, BNB and BNBT have worked collaboratively
 5 under the name "BNBuilders" to provide innovative construction contracting services as a
 6 premier West Coast construction company.

7 6. Evidence of the BNBuilders joint undertaking includes the following:

- 8 a. Joint Website: At www.bnbuilders.com, BNB and BNBT are presented
 9 as a single entity which is "one of the fastest growing construction firms
 10 along the West Coast."
- 11 b. Joint Marketing: BNB and BNBT jointly market their services as a
 12 single entity, including sharing marketing employees and jointly
 13 publishing a quarterly newsletter that does not distinguish between BNB
 14 and BNBT but rather refers to a single "BNBuilders" entity, with
 15 BNBT's projects being attributed to BNBuilders.
- 16 c. Joint Business Development: Similar to marketing, BNB and BNBT
 17 jointly conduct business development as part of a single entity,
 18 BNBuilders. BNB and BNBT share business development employees,
 19 and representatives from BNB and BNBT travel to meet with potential
 20 clients and secure work.
- 21 d. Reference to Projects in Work Proposals: Historically, when BNB and
 22 BNBT have made proposals for construction projects, they have
 23 combined all work performed by BNB or BNBT and consistently
 24 referred to projects as having been performed by a single entity,
 25 BNBuilders.
- 26 e. Joint Benefits: BNB and BNBT share a common benefits package
 27 administered by BNB, including the following:

- i. A single health plan.
- ii. A single flexible spending account plan.
- iii. A single health savings account plan.
- iv. A single 401(k) plan (through December 2014).
- v. Group life insurance and group disability insurance, with the same enrollment schedule and process.

f. Joint Employee Recruiting: BNB and BNBT undertake joint employee recruiting efforts.

g. Joint Handbook, Policies, and Training: BNB and BNBT provide a single employee handbook for all BNBuilders employees, as well as joint employee policies and notices. BNB and BNBT have also provided joint trainings to employees.

h. Capital, infrastructure, and business opportunities: BNB has provided in excess of \$2 million of capital, as well as infrastructure and various business opportunities, to start BNBT and make it viable.

i. Shared expenses: BNB and BNBT share expenses, typically on a head-count basis, including:

- i. Human Resources;
- ii. Information Technologies;
- iii. Marketing;
- iv. Safety; and
- v. Compensation for employees who provide services for both BNB and BNBT.

j. Joint financials: BNB and BNBT have historically combined their financial statements into a single consolidated financial statement.

k. Joint master service agreements: BNB and BNBT have jointly executed master service agreements with clients.

III. DECLARATORY RELIEF

7. BNB realleges the allegations set forth in paragraphs 1-6 above as though fully set forth herein.

8. RCW 25.05.055(1) codifies the Revised Uniform Partnership Act definition of “partnership” as the “association of two or more persons to carry on as co-owners a business for profit . . . whether or not the persons intend to form a partnership.”

9. Since BNBT's formation in 2007, BNB and BNBT have divided projects and allocated expenses based on a joint effort to work cooperatively in a joint venture for the collective benefit of both companies.

10. Based on the joint undertakings described herein, BNB and BNBT are partners as a matter of law in a partnership known as BNBuilders.

11. BNBuilders is a Washington partnership because BNBuilders' chief executive office is in King County, Washington.

12. BNB is entitled to a declaratory judgment that BNBT and BNB are partners in BNBuilders under Washington law.

IV. BREACH OF FIDUCIARY AND PARTNERSHIP DUTIES and INJUNCTIVE RELIEF

13. BNB realleges the allegations set forth in paragraphs 1-12 above as though fully set forth herein.

14. As a partner in BNBuilders, BNBT owes various fiduciary duties to BNB, including:

- a. The duty to act in good faith;
- b. The duty to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct of BNBuilders; and
- c. The duty to refrain from competing with BNBuilders in the conduct of the partnership business.

1 15. In addition, as part of BNBT's fiduciary and partnership duties, BNB and BNBT
 2 have treated all BNBuilders opportunities within 150 miles of BNBT's San Mateo, California
 3 office as BNBT's opportunities, while all opportunities outside of that 150-mile radius have
 4 been BNB's opportunities. This is evidenced by the parties' conduct since BNBT's formation
 5 and Section 21 of the BNBT Shareholders' Agreement, which precludes any BNBT
 6 shareholder from involvement with any entity competing with BNBT within 150 miles of
 7 BNBT's office in San Mateo, California (absent BNBT Board approval). By implication, and
 8 as the parties' conduct has demonstrated over the years, all opportunities outside the 150-mile
 9 radius belong to BNB.

10 16. BNBT has committed multiple breaches of fiduciary and partnership duties as a
 11 BNBuilders partner, including but not limited to the following:

- 12 a. Customer 1: BNBT has retained two payments from Customer 1¹
 13 totaling approximately \$2.366 million for construction work performed
 14 by BNB. BNB is entitled to those proceeds because it is the entity
 15 completing the Customer 1 work. BNBT has refused to transfer the
 16 Customer 1 proceeds to BNB, despite repeated demands and despite
 17 BNBT's acknowledgment that the funds belong to BNB.
- 18 b. Customer 2 Project in Quincy, Washington: BNBuilders has been
 19 courting this customer for many months, and the customer is in the
 20 process of selecting a general contractor for a new data center in Quincy,
 21 Washington. The Quincy opportunity belongs to BNB because it is
 22 located far outside the 150-mile San Mateo BNBT radius. Yet BNBT
 23 officers Sean Truesdale and David Becker have indicated that BNBT
 24 will pursue the Quincy opportunity. In addition, Truesdale and Becker

26 1 Customer identities have been redacted pursuant to the Court's Minute Order dated March 27, 2015
 27 (ECF No. 42). Counsel for BNBT has been provided with the identities of all anonymized customers
 listed in this Amended Complaint.

1 have instructed BNBT employees to withhold critical information from
 2 BNB in connection with BNB's legitimate pursuit of this project.

3 c. Customer 3 Data Center in The Dalles, Oregon: BNBuilders has been
 4 courting this client for many months, and the client is in the process of
 5 selecting a general contractor for work at its planned new data center
 6 campus in The Dalles, Oregon. The Dalles opportunity belongs to BNB
 7 because it is located far outside the 150-mile San Mateo radius. Similar
 8 to the Customer 2 Quincy project, Truesdale and Becker have informed
 9 BNB that BNBT will pursue The Dalles opportunity for BNBT only. In
 10 addition, Truesdale and Becker have instructed BNBT employees to
 11 withhold critical information from BNB in connection with BNB's
 12 legitimate pursuit of this project.

13 d. Customer 4: Customer 4 is a customer of BNBuilders, and Customer 4
 14 has projects being completed by BNBT near San Mateo and by BNB in
 15 Washington. BNBT has breached its fiduciary duties by mishandling its
 16 Customer 4 job and then failing to properly respond to Customer 4
 17 concerns and inquiries. BNBT's actions have damaged BNBuilders'
 18 business relationship with Customer 4 and jeopardized BNB's ability to
 19 procure other work with Customer 4.

20 e. Customer 5 Fee Sharing: BNBT obtained a contract with Customer 5 in
 21 the 150-mile San Mateo radius that it would not have obtained without
 22 BNB's participation in the contract discussions and BNB's signature on
 23 the Customer 5 contract. In return for BNB signing the Customer 5
 24 contract and accepting liability thereunder, Truesdale and Becker agreed
 25 that BNBT would negotiate in good faith to pay BNB a risk-sharing fee.
 26 To date, BNBT has failed to negotiate in good faith with BNB over the
 27 risk-sharing fee and BNBT has failed to pay any such fee.

f. Joint marketing and business development: Based on instructions from Truesdale and Becker, BNBT has attempted to preclude BNB from continuing to use the joint BNBuilders marketing materials featuring BNBT projects. BNBT has also refused to cooperate in joint business development efforts with BNB on behalf of BNBuilders.

17. As BNB's partner in BNBuilders, BNBT is liable to BNB for BNBT's breaches of fiduciary duty and breaches of partnership duties that have caused harm to BNB.

18. BNB's breaches of its fiduciary and partnership duties continue to damage BNB in an amount to be proven at trial. BNB's damages to date exceed \$2.366 million, which is the amount that BNBT has refused to transfer to BNB on the Customer 1 project alone.

19. BNB continues to suffer irreparable harm as a partner in BNBuilders due to BNBT's breaches of fiduciary duties and partnership duties. Accordingly, BNB is entitled to preliminary and permanent injunctive relief barring BNBT from further breaches of its fiduciary duties and partnership duties.

V. ATTORNEYS' FEES AND COSTS

20. BNB realleges the allegations set forth in paragraphs 1-19 above as though fully set forth herein.

21. BNB is entitled to its reasonable attorneys' fees, expenses, and costs incurred herein. Washington law permits awards for attorneys' fees and costs in litigation involving breaches of fiduciary and partnership duties by partners in a partnership.

VI. PRAYER FOR RELIEF

BNB prays for the following relief:

1. For a declaratory judgment that BNBT and BNB are partners in BNBuilders under Washington law.

2. For judgment against BNBT for damages sustained by BNB as a result of BNBT's breaches of fiduciary and partnership duties as a partner in BNBuilders.

3. For an injunction preventing BNBT from further breaching its fiduciary and partnership duties as a partner in BNBuilders.

4. For BNB's reasonable attorneys' fees and costs incurred herein.

5. For interest on the entire amount of judgment against BNBT at the statutory rate from and after the date of judgment until paid.

DATED: April 6, 2015

LANE POWELL PC

By /s/ Randall P. Beighle
Randall P. Beighle, WSBA No. 13421
beighler@lanepowell.com
Daniel A. Kittle, WSBA No. 43340
kittled@lanepowell.com
Telephone: 206.223.7000
Facsimile: 206.223.7107
Attorneys for Plaintiff BNBuilders, Inc.

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 6th day of April 2015, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Brian W. Esler, Esq.
Daniel J. Oates, Esq.
Miller Nash Graham & Dunn LLP
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121
Telephone: (206) 624-8300
Email: brian.esler@millernash.com
Email: dan.oates@millernash.com
Attorneys for Defendants

David D. Schneider, Esq.
Stephanie Hamilton Borchers, Esq.
Mark D. Kruthers, Esq.
Steven D. McGee, Esq.
Timothy J. Larson, Esq.
Dowling Aaron Incorporated
8080 North Palm Avenue, Third Floor
Fresno, CA 93711
Telephone: (559) 432-4500
Email: dschneider@dowlingaaron.com
Email: sborchers@dowlingaaron.com
Email: mkruthers@dowlingaaron.com
Email: smcgee@dowlingaaron.com
Email: tlarson@dowlingaaron.com
Attorneys for Defendants (Pro Hac Vice)

Executed on the 6th day of April 2015 at Seattle, Washington.

/s/ Terry Intlekofer
Terry Intlekofer, Legal Assistant